Junkyard Construction Co., Inc. *and* Local 79, Construction and General Building Trades Council, LIUNA, AFL-CIO. Case 2–CA–31920

June 30, 1999

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Upon a charge filed by the Union on December 28, 1998, the General Counsel of the National Labor Relations Board issued a complaint on March 24, 1999, against Junkyard Construction Co., Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On May 26, 1999, the General Counsel filed a Motion for Summary Judgment with the Board. On May 28, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letters dated April 8 and May 3, 1999, notified the Respondent that unless an answer were received by April 16 and May 10, 1999, respectively, a Motion for Summary Judgment would be filed.[1]

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

[1] The letters were sent by certified mail. The General Counsel's Motion for Summary Judgment states that although no return receipt was received for the April 8 letter, this letter was apparently delivered because it was not returned to the Regional Office. The Respondent's failure or refusal to accept certified mail cannot defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a New York corporation with an office and place of business at 2068 Anthony Avenue, Bronx, New York, performs general construction and interior demolition services in the New York metropolitan area. Annually, the Respondent, in conducting its business operations described above, performs services valued in excess of $50,000 for enterprises located within the State of New York that meet a direct standard for the assertion of jurisdiction under the Act, including Philips Aster, LLC. Further, in conducting its business operations, the Respondent annually purchases and receives goods, materials, and supplies valued in excess of $5000 from points directly outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The interior demolition workers employed by the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. In about May 1998, the Respondent entered into an Independent Interior Demolition Contractors Collective-Bargaining Agreement with the Union effective by its terms from October 1, 1996, through June 30, 2000.

The Respondent, an employer engaged in the building and construction industry, granted recognition to the Union as the exclusive collective-bargaining representative of the unit without regard to whether the majority status of the Union had ever been established under the provisions of Section 9(a) of the Act. This recognition has been embodied in the collective-bargaining agreement described above. Since May 1998, the Union has been the limited exclusive collective-bargaining representative of the unit pursuant to Section 8(f) of the Act.

On about October 1, 1998, the Respondent began performing interior demolition work at 1325 Astor Place, New York, New York (the jobsite). The Respondent, by its president and agent, Zephaniah Davis, on about October 27, 1998, at the jobsite: (1) on several occasions threatened to shut down the jobsite if employees spoke with the Union; (2) threatened to discharge employees if they spoke with the Union; and (3) engaged in surveillance of employees' union activities. In addition, on about October 28, 1998, Davis locked employees inside the jobsite to prevent them from speaking with the Union.

Further, the Respondent, by its foreman and agent John Carlton, at the jobsite on about October 7, 1998, directed employees not to speak with any representatives

of the Union, and on about October 27, 1998, threatened to discharge employees if they supported the Union.

The collective-bargaining agreement with the Union entered into by the Respondent in about May 1998, contains provisions that relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. Since about October 1, 1998, for the duration of the work performed at the jobsite, the Respondent has failed and refused to abide by the terms of the collective-bargaining agreement described above. The Respondent has failed to abide by the agreement without prior notice to the Union and without affording the Union an opportunity to bargain as the limited exclusive representative of the unit employees with respect to those acts and conduct, and their effects.

CONCLUSION OF LAW

By threatening employees with discharge and the shutting down of the jobsite if they supported the Union or spoke with union representatives, engaging in surveillance of employees' union activities, directing employees not to talk to union representatives, and locking employees in the jobsite to prevent them from talking to union representatives, the Respondent has interfered with, restrained, and coerced employees in the exercise of their rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

By failing and refusing to abide by the terms of the 1996–2000 Independent Interior Demolition Contractors Collective-Bargaining Agreement entered into with the Union in about May 1998, the Respondent has failed and refused to bargain collectively and in good faith with the Union as the limited exclusive bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order the Respondent to recognize and bargain with the Union as the limited exclusive bargaining representative of the unit employees, to abide by the 1996-2000 collective-bargaining agreement, and to make whole the unit employees for any loss of wages or benefits they may have suffered as a result of the Respondent's failure to do so since October 1, 1998, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 42 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In addition, we shall order the Respondent to make all contractually required contributions to the fringe benefit funds that it has failed to make since October 1, 1998, including any additional amounts due the funds on behalf of the unit employees in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). Further, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.[2]

ORDER

The National Labor Relations Board orders that the Respondent, Junkyard Construction Co., Inc., Bronx, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees that they would be discharged or that the jobsite would be shut down if they spoke with union representatives.

(b) Threatening employees with discharge if they supported Local 79, Construction and General Building Trades Council, LIUNA, AFL–CIO, or any other labor organization.

(c) Locking employees inside the jobsite to prevent them from speaking with union representatives.

(d) Directing employees not to speak with any representatives of the Union.

(e) Engaging in surveillance of employees' union activities.

(f) Failing and refusing to abide by the terms of the 1996–2000 Independent Interior Demolition Contractors Collective-Bargaining Agreement.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and bargain with the Union as the limited exclusive collective-bargaining representative of the interior demolition workers employed by the Respondent, and abide by the terms of the 1996–2000 collective-bargaining agreement described above.

(b) Make whole the unit employees for any loss of wages or benefits they may have suffered as a result of its unlawful refusal to abide by the collective-bargaining agreement since October 1, 1998, and reimburse them for

[2] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

any expenses ensuing from its failure to make the contractually required contributions to the fringe benefit funds, as set forth in the remedy section of this decision.

(c) Make all contractually required contributions to the fringe benefit funds that it has failed to make since October 1, 1998, as set forth in the remedy section of this decision.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Bronx, New York, copies of the attached notice marked "Appendix"[3] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 1, 1998.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 30, 1999

Sarah M. Fox, Member

Wilma B. Liebman, Member

Peter J. Hurtgen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[3]If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten you that you will be discharged or that we will shut down the jobsite if you speak with union representatives.

WE WILL NOT threaten you with discharge if you support Local 79, Construction and General Building Trades Council, LIUNA, AFL–CIO, or any other labor organization.

WE WILL NOT lock you inside the jobsite to prevent you from speaking with union representatives.

WE WILL NOT direct you not to speak with any representatives of the Union.

WE WILL NOT engage in surveillance of your union activities.

WE WILL NOT fail and refuse to abide by the terms of the 1996–2000 Independent Interior Demolition Contractors Collective-Bargaining Agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize and bargain with the Union as the limited exclusive collective-bargaining representative of the interior demolition workers employed by us, and abide by the terms of the 1996–2000 collective-bargaining agreement described above.

WE WILL make whole the unit employees for any loss of wages or benefits they may have suffered as a result of our unlawful refusal to abide by the collective-bargaining agreement since October 1, 1998, and reimburse them for any expenses ensuing from our failure to make the contractually required contributions to the fringe benefit funds, with interest.

WE WILL make all contractually required contributions that we have failed to make since October 1, 1998, with interest.

JUNKYARD CONSTRUCTION CO., INC.